

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

DIRECT MARKETING CONCEPTS, INC., et al.,

Defendants.

Civ. No. 04-11136-GAO

**PLAINTIFF FEDERAL TRADE COMMISSION'S REPLY TO RESPONSE TO THE
COMMISSION'S MOTION REQUESTING THAT PREVIOUSLY SUBMITTED
STIPULATED FINAL ORDERS NOT BE ENTERED**

The Federal Trade Commission respectfully submits this Reply to the Response filed by Healthy Solutions, LLC, Health Solutions, Inc., Gregory Geremesz, Michael Howell, and Alejandro Guerrero concerning the Commission's request that the Court not enter two previously filed Stipulated Final Orders. The Orders in question are, respectively, with: (1) Defendants Alejandro Guerrero and Health Solutions, Inc. [Dkt. # 93]; and (2) Defendants Healthy Solutions LLC, Gregory Geremesz, and Michael Howell [Dkt. # 98].

The Commission's agreement to the small monetary judgments contained in those two Orders was premised not only on the financial information provided by those five Defendants, but also on our understanding that none of them was going to receive a financial windfall as a result of private litigation currently underway between them and ITV Direct arising from ITV Direct's purchase of Supreme Greens with MSM from Healthy Solutions LLC. *ITV Direct, Inc. v. Healthy Solutions, LLC, et al.* (Civil Action No. 04-CV-10421-JLT).¹

¹ That understanding was based on representations made in the private litigation to the effect that ITV Direct and Healthy Solutions LLC had agreed to dismiss all of their respective claims and counterclaims, and that the only remaining claims were those being asserted by an

In fact, it now appears that Healthy Solutions LLC may receive such a windfall in the amount of more than \$1 million in the private litigation.² Accordingly, because the circumstances under which the Commission agreed to the Orders may have changed and the Commission firmly believes that any such money should go to consumers, not to Healthy Solutions LLC and its principals, it requests that the Stipulated Final Judgments not be entered at this time.

Respectfully submitted,



DANIEL KAUFMAN
KIAL S. YOUNG (BBO # 633515)
EDWARD GLENNON
Federal Trade Commission
600 Pennsylvania Avenue, NW; Suite NJ-3212
Washington, DC 20580
(202) 326-2675, -3126 (voice); (202) 326-3259 (fax)
dkaufman@ftc.gov or eglennon@ftc.gov
ATTORNEYS FOR PLAINTIFF

DATE: July 28, 2005

intervenor who claimed that it had not been paid for certain quantities of Supreme Greens that it had manufactured for Healthy Solutions LLC.

² See July 20, 2005 Order in *ITV Direct, Inc. v. Healthy Solutions LLC* (inviting Healthy Solutions to file a proposed judgment regarding its counterclaim against ITV Direct) (Exhibit A hereto); and July 22, 2005 Letter to Zita Lovett, Clerk to Judge Tauro from Becky V. Christensen (enclosing proposed Judgment in favor of Healthy Solutions LLC) (Exhibit B).

Exhibit A

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

ITV DIRECT, INC.,
Plaintiff,

v.

HEALTHY SOLUTIONS, LLC et al.,
Defendants.

CAPPSEALS, INC.,
Plaintiff-in-Intervention,

v.

HEALTHY SOLUTIONS, LLC, d/b/a
DIRECT BUSINESS CONCEPTS; ITV
DIRECT, INC.; and DIRECT
FULFILLMENT, LLC,
Intervenor-Defendants.

*
*
*
*
*
*
*
*
*
*
*
*
*
*
*

Civil Action No. 04-10421-JLT

ORDER

July 20, 2005

TAURO, J.

This court hereby orders that:

1. Cappseals, Inc.'s Motion for Summary Judgment [#120] is ALLOWED;
2. ITV Direct's Motion to Strike Affidavit of Kial Young Filed in Support of Cappseals' Motion for Summary Judgment [#129] is DENIED AS MOOT because this court did not rely on the affidavit in deciding Cappseals' Motion;
3. Healthy Solutions shall file a Proposed Rule 54(b) Judgment with respect to the relevant counterclaim against ITV for the price of the goods;

4. Capseals shall file a Proposed Rule 54(b) Judgment with respect to its reach-and-apply claim against ITV; and
5. The Proposed Judgments shall specify the principal amounts due, together with any appropriate interest and costs.

IT IS SO ORDERED.

/s/ Joseph L. Tauro
United States District Judge

Exhibit B

O'CONNOR CHRISTENSEN & MCLAUGHLIN LLP
INTELLECTUAL PROPERTY LITIGATORS
1920 MAIN STREET, SUITE 150
IRVINE, CALIFORNIA 92614

TEL. (949) 851-5000

FAX (949) 851-5051

July 22, 2005

VIA ELECTRONIC FILING

Ms. Zita Lovett, Clerk to Judge Tauro
United States District Court
For the District of Massachusetts
John Joseph Moakely U.S. Courthouse
1 Courthouse Way
Boston, MA 02210

Re: *ITV Direct, Inc. v. Healthy Solutions LLC, et al. and Cappseals, Inc. v. Healthy Solutions LLC d/b/a Direct Business Concepts, et al.*,
Civil Action No. 04-CV-10421-JLT

Dear Clerk Lovett:

Pursuant to paragraph 4 of Judge Tauro's July 20, 2005 Order [Docket #133] and Fed. R. Civ. P. 54(b), attached please find Healthy Solutions LLC's proposed Judgment.

Sincerely,
O'CONNOR CHRISTENSEN & MCLAUGHLIN LLP

/s/ Becky V. Christensen, Esq.

By: Becky V. Christensen, Esq.
Attorneys for Healthy Solutions LLC

BVC:tlo

Enclosure

cc: Counsel for all parties by electronic service

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

ITV DIRECT, INC.)	Civil Action No. 04-CV-10421-JLT
)	
Plaintiff,)	Honorable Joseph L. Tauro
)	
v.)	
)	
HEALTHY SOLUTIONS, LLC, et al.,)	
)	
Defendants.)	
)	
_____)	
AND RELATED ACTIONS)	
_____)	

JUDGMENT

THE HONORABLE JOSEPH L. TAURO

This action came before the Court upon Plaintiff-in-Intervention Cappseals Inc.'s Motion for Summary Judgment. The issues have been heard and an ORDER and MEMORANDUM were issued on July 20, 2005, allowing Cappseals' Motion for Summary Judgment and awarding the price of goods to Healthy Solutions LLC and finding that "there is no just reason to further delay payment."

WHEREFORE, IT IS HEREBY ORDERED AND ADJUDGED

Pursuant to Fed. R. Civ. P. 54(b) judgment is hereby entered for Healthy Solutions LLC on its claim for goods delivered against ITV Direct Inc., and Direct Fulfillment, LLC, jointly and severally, in the amount of \$1,086,672.80, said amount consisting of:

- 1) Principal in the amount of \$931,680.91, calculated as the total invoiced price for goods delivered of \$1,821,864.00, less principal awarded to Cappseals Inc. of \$890,183.09;
- 2) Pre-Judgment interest¹ on the principal amount from March 6, 2004² to July 25, 2005 in the amount of \$154,991.41;
- 3) Together with post judgment interest from and after July 26, 2005 accruing at the statutory rate until paid in full.

IT IS SO ORDERED.

DATED: _____

HONORABLE JOSEPH L. TAURO
UNITED STATES DISTRICT COURT JUDGE

Respectfully submitted,

O'CONNOR CHRISTENSEN &
MCLAUGHLIN LLP

/s/ Becky V. Christensen, Esq.
Becky V. Christensen, Esq.
Counsel for Healthy Solutions LLC,
Health Solutions Inc., Alejandro Guerrero,
Michael Howell, Gregory Geremesz
1920 Main Street, Suite 150
Irvine, CA 92614
949 851-5000 Telephone
949 851-5051 Facsimile

Dustin F. Hecker, Esq.
Posternak Blankstein & Lund LLP
Counsel for Healthy Solutions LLC,
Health Solutions Inc., Alejandro Guerrero,
Michael Howell, Gregory Geremesz

¹ Computed pursuant to Mass. Gen. Laws ch. 231, § 6C.

² The due date of the last invoice.

CERTIFICATE OF SERVICE

I hereby certify that on July 22, 2005, a copy of the foregoing **COVER LETTER AND JUDGMENT** was filed electronically. Notice of this filing will be sent to all parties by operation of the Court's electronic filing system. Parties may access this filing through the Court's system.

Christopher F. Robertson, Esq.
Peter S. Brooks, Esq.
Susan W. Gelwick, Esq.
SEYFARTH SHAW LLP
Two Seaport Lane, Suite 300
Boston, MA 02210
(617) 946-4800
(617) 946-4801 Facsimile
crobertson@seyfarth.com
pbrooks@seyfarth.com
sgelwick@seyfarth.com

Attorneys for Plaintiff, Intervenor Defendant,
Counter Defendant
ITV DIRECT, INC. and DIRECT
FULFILLMENT, LLC

Daniel J. Kelly, Esq.
Scott A. Silverman, Esq.
GADSBY HANNAH LLP
225 Franklin Street
Boston, MA 02110
(617) 345-7026
(617) 204-8026 Facsimile
dkelly@ghlaw.com
ssilverman@ghlaw.com
Kcataldo@ghlaw.com

Attorneys for Plaintiff-in-Intervention
CAPPSEALS, INC.

/s/ Becky V. Christensen
Becky V. Christensen, Esq.
Counsel for Healthy Solutions LLC, Health
Solutions Inc., Alejandro Guerrero, Michael
Howell, and Gregory Geremesz

CERTIFICATE OF SERVICE

My name is Edward Glennon and I am an attorney with Federal Trade Commission. On July 28, 2005, copies of Plaintiff Federal Trade Commission's Reply to Response to the Commission's Motion Requesting That Previously Submitted Stipulated Final Orders Not Be Entered were served via Federal Express as follows:

Becky V. Christensen, Esq. (for Michael Howell, Greg Geremesz, Health
O'Connor Christensen & McLaughlin LLP Solutions, LLC, Alejandro Guerrero and Health
1920 Main Street, Suite 150 Solutions, Inc)
Irvine, CA 92614
Facsimile: (949) 851-5051

Dustin F. Hecker (for Michael Howell, Greg Geremesz, Health Solutions,
Posternak Blankstein & Lund LLP LLC, Alejandro Guerrero and Health Solutions, Inc)
The Prudential Tower
800 Boylston Street
Boston, Massachusetts 02199-8004
Facsimile: (617) 722-4927


Chris Robertson, Esq. (for Direct Marketing Concepts, Inc., ITV Direct, Inc., Donald
Seyfarth Shaw, LLP W. Barrett, and Robert Maihos
World Trade Center East
Two Seaport Lane, Suite 300
Boston, MA 02210
Facsimile: (617) 946-4801

Joseph Ryan (for Triad ML Marketing, Inc., King Media, Inc., Allen
Lyne, Woodworth & Evarts LLP Stern, Lisa Stern, and Steven Ritchey)
600 Atlantic Avenue
Boston, MA 02210
Facsimile: (617) 248-9877

Sage International, Inc. (for BP International, Inc.)
Attention: Molly Wheeler
1135 Terminal Way, Suite 209
Reno, NV 89502
Facsimile: (775) 786-2013

Brad Keene, Esq. (for BP International, Inc.)
Keene & Gizzi
220 Broadway, Suite 402
Lynnfield, MA 01940
Facsimile: (781) 346-6355

I declare under penalty of perjury that the foregoing is true and correct. Executed this July 28, 2005 at Washington, D.C.



Edward Glennon